

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Adriaan Denbroeder	Team: Squad #15	CCRB Case #: 202101710	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 03/07/2021 7:56 AM	Location of Incident: § 87(2)(b)	Precinct: 52	18 Mo. SOL 9/7/2022	EO SOL 9/7/2022	
Date/Time CV Reported Sun, 03/07/2021 2:20 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/16/2021 11:22 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. PO Ron Castro	12847	960343	052 PCT
3. POM Daniel Rivera	05512	965840	052 PCT
4. POM Hans Arias	00503	960173	052 PCT
5. PO Yordani Capellan	04335	960321	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Rivera	Discourtesy: Police Officer Daniel Rivera spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B. Officers	Off. Language: Officers made remarks to § 87(2)(b) based upon race.	§ 87(2)(b)
C.POM Daniel Rivera	Abuse: Police Officer Daniel Rivera threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
D.POM Daniel Rivera	Abuse: Police Officer Daniel Rivera entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
E.POM Hans Arias	Abuse: Police Officer Hans Arias entered § 87(2)(b)	§ 87(2)(b)
F.PO Ron Castro	Abuse: Police Officer Ron Castro entered § 87(2)(b)	§ 87(2)(b)
G.PO Yordani Capellan	Abuse: Police Officer Yordani Capellan entered location.	§ 87(2)(b)
H.POM Daniel Rivera	Abuse: Police Officer Daniel Rivera threatened § 87(2)(b) Williams with the use of force.	§ 87(2)(b)
I.POM Daniel Rivera	Force: Police Officer Daniel Rivera used physical force against § 87(2)(b)	§ 87(2)(b)
J.POM Daniel Rivera	Discourtesy: Police Officer Daniel Rivera spoke discourteously to An Individual.	§ 87(2)(b)
K.POM Hans Arias	Abuse: Police Officer Hans Arias made a sexually suggestive remark to § 87(2)(b)	§ 87(2)(b)

Case Summary

On March 7, 2021, Rashawn § 87(2)(b) filed this complaint with IAB. On March 16, 2021, this complaint was received at the CCRB via IAB log 21-5790.

On March 7, 2021, at approximately 7:56 am, a resident of § 87(2)(b) called 911. The caller stated that she heard an assault in progress occurring in the apartment directly next door to hers and stated she could see her own bedroom wall shaking. She stated she heard a female stating, “get off of me.”

Police Officers Daniel Rivera, Ron Castro, Hans Arias, and Yordani Capellan of the 52nd Precinct responded to the location. Police Officer Rivera knocked on § 87(2)(b)'s door and stated, “Open the fucking door” (**Allegation A: Discourtesy**—§ 87(2)(g) § 87(2)(b) asked officers why they were at his door. While § 87(2)(b) stood behind the door, an officer allegedly stated, “Open the fucking door, nigger” (**Allegation B: Offensive Language**—§ 87(2)(g) § 87(2)(b) continued to ask the officer why they were at his door. Police Officer Rivera then stated, “You’ve got two seconds and I’m going to kick your door down” (**Allegation C: Abuse of Authority**—§ 87(2)(g) § 87(2)(b) then opened the door and Police Officer Rivera immediately entered the apartment and asked § 87(2)(b) where his girlfriend was (**Allegation D: Abuse of Authority**—§ 87(2)(g) § 87(2)(b) A female individual stood behind § 87(2)(b) asked Police Officer Rivera why officers were at his door. Police Officer Rivera then stated, “get your fucking hands out of my face” (**Allegation A: Discourtesy**—§ 87(2)(g) Police Officer Rivera then removed his OC Spray from his utility belt and stated, “Don’t make me mace you, bro” (**Allegation H: Abuse of Authority**—§ 87(2)(g) During the conversation, § 87(2)(b) pushed the female individual. Police Officer Rivera then pushed § 87(2)(b) with his forearm, and then with two hands (**Allegation I: Force**—§ 87(2)(g) and walked further into the apartment. Police Officers Castro, Capellan, and Arias followed him (**Allegations E, F, G—Abuse of Authority**—§ 87(2)(g) The officers remained in the apartment then went outside to speak with the female individual as § 87(2)(b) stayed inside the apartment. As officers exited the apartment, Police Officer Rivera stated to the female individual, “what the fuck’s going on?” (**Allegation J: Discourtesy**—§ 87(2)(g) The female individual stated to officers that she was okay. Officers then turned to leave the location. As they did, § 87(2)(b) started to yell from his apartment. § 87(2)(b) stated, “all ya’ll are gonna eat my big black dick.” PO Arias responds, “Okay. So, whip it out, whip it out. Let me see. So? So? We do it together. You’re the one that’s saying it. So? It’s 2020” (**Allegation K: Abuse of Authority**—§ 87(2)(g) No individuals were arrested or summonsed during this incident. No individuals were injured or received medical treatment during this incident.

Body Worn Camera footage from Police Officers Rivera, Arias, Castro, and Capellan captured footage of this incident (**Board Review 2, 3, 4, 5**).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Daniel Rivera spoke discourteously to § 87(2)(b).

It is undisputed that PO Rivera used profanity twice with § 87(2)(b) during the incident. PO Rivera stated in his CCRB interview (**Board Review 9**) that he knocked on § 87(2)(b)'s door in response to the report of an assault in progress and no one answered for less than one minute. PO Rivera then called the 911 caller back. The 911 caller, who lived directly next door to § 87(2)(b) stated that she had heard a physical altercation happening in the apartment directly

next door to her own, and that she believed a female individual was being hurt inside. PO Rivera spoke to the 911 caller for approximately one minute.

It is undisputed that § 87(2)(b) did not open the door immediately in response to officers knocking. PO Rivera then continued to knock on § 87(2)(b)'s door and stated, "police." No one answered. At this point, PO Rivera stated that he felt concerned for the alleged victim's safety inside the apartment (**Board Review 9**). At one point as PO Rivera knocked on the door, a male voice, answered and asked officers why they were at his door and that officers could not be at his door. PO Rivera responded that the individual needed to open the door. PO Rivera then stated, "Open the fucking door." PO Rivera stated that he used profanity because he feared for the safety of an alleged victim inside the apartment.

According to PO Rivera's testimony (**Board Review 9**), § 87(2)(b) eventually opens the door. PO Rivera's Body Worn Camera footage (**Board Review 3**) shows that at timestamp 1:22, he enters the interior of the apartment. PO Rivera's Body Worn Camera (**Board Review 3**) shows that the interaction with § 87(2)(b) quickly escalates. § 87(2)(b) stands in front of the female individual, and as she walks towards the doorway, § 87(2)(b) pushes her back further into the apartment. While inside the apartment, PO Rivera and other officers continue to try to speak with the female individual. During this interaction, § 87(2)(b) gesticulates with his hands, and moves them slowly at face level when he speaks. § 87(2)(b) asks multiple times why the officers are at his apartment. § 87(2)(b) refused to identify the female individual and she could not be identified or reached for a statement. The female individual's name is not noted on any documentation regarding this incident.

At timestamp 1:33 of PO Rivera's Body Worn Camera (**Board Review 3**), PO Rivera states to § 87(2)(b) "get your hands out of my face." At timestamp 1:38, § 87(2)(b) reaches his right hand towards PO Rivera's face. PO Rivera states, "get your fucking hand out of my face, bro. Out of my fuckin face bro." PO Rivera stated in his CCRB interview (**Board Review 9**), that he used profanity in that moment due to the tension, the nature of the call, and what he perceived as § 87(2)(b)'s aggression. At timestamp 1:39 of PO Castro's Body Worn Camera footage (**Board Review 4**), PO Rivera jumps back quickly as he states, "get your fucking hands out of my face."

Administrative Guide Regulation 304-06 (**Board Review 13**) prohibits the use of "discourteous or disrespectful remarks" and reads that members of service shall in treat members of the public with "titles of respect." DCT Case Number 2013-10143 (**Board Review 19**) notes that profanity is prohibited, except for in cases when officers feel unsafe, and that the situation they are in is dangerous for themselves and others.

PO Rivera had specific reason to believe that there was an emergency going on in the apartment. PO Rivera was prepared to enter the apartment forcefully and stated "open the fucking door" because he wished to urgently speak to the alleged victim inside.

When § 87(2)(b) did open the door, the circumstances had not remarkably changed in terms of danger to officers, and the emergency that officers were responding to. When interacting with § 87(2)(b) PO Rivera first stated the order, "get your hands out of my face" without using any profanity. § 87(2)(b) continued to put his hands in PO Rivera's face, and PO Rivera jumped back, away from § 87(2)(b) in response to this action.

Although it is undisputed that PO Rivera used profanity in two instances with § 87(2)(b) he had reason to believe there was an emergency at hand. Prior to § 87(2)(b) opening the door, PO Rivera feared for the safety of an alleged victim inside the apartment and used profanity due to the

urgency of the situation. The second time PO Rivera used profanity, he first tried to issue the same command without using profanity. § 87(2)(b), § 87(2)(g)

Allegation (B) Offensive Language: An officer made remarks to § 87(2)(b) based upon race.

It remains in dispute whether officers made remarks to § 87(2)(b) based upon race. § 87(2)(b) stated in his CCRB interview (**Board Review 1**) that he heard voices prior to him opening the door to his apartment. § 87(2)(b) heard someone say, “police open the door.” § 87(2)(b) then heard banging sounds and then he stated he may have heard the words, “open the fucking door, nigger.” § 87(2)(b) stated that he heard this while standing behind his closed apartment door. § 87(2)(b) could not see the officer who made this alleged statement. The female individual could not be identified by the investigation or contacted.

PO Rivera and PO Castro were the first two officers to arrive outside of § 87(2)(b)'s door. Their BWC cameras were activated and began recording video and audio as PO Capellan and PO Arias arrived. In the 1-minute buffer before their cameras were activated, the video without audio recording shows that the officers had already begun knocking on the door and PO Rivera was using his cell phone to call someone. No officer could be heard using the word “nigger” or any other racial epithets after the BWCs were activated.

PO Rivera stated in his CCRB interview (**Board Review 9**) that he did not hear any officer say, “open the fucking door, nigger” and did not say that himself. PO Rivera stated that he did not hear any officer using racial epithets of any sort. PO Arias stated in his CCRB interview (**Board Review 10**) that he did not remember any officer stating the “n-word” in full and did not use those words himself. PO Castro stated in his CCRB interview that no officer stated the “n-word” in full (**Board Review 11**). PO Capellan stated in his CCRB interview (**Board Review 12**) that he did not remember any officer saying, “open the fucking door, nigger” and did not say those words himself.

§ 87(2)(b), § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Daniel Rivera threatened to damage § 87(2)(b)'s property.

Allegation (D) Abuse of Authority: Police Officer Daniel Rivera entered § 87(2)(b) in the Bronx.

Allegation (E) Abuse of Authority: Police Officer Hans Arias entered § 87(2)(b).

Allegation (F) Abuse of Authority: Police Officer Ron Castro entered § 87(2)(b).

Allegation (F) Abuse of Authority: Police Officer Ron Castro entered § 87(2)(b).

Allegation (G) Abuse of Authority: Police Officer Yordani Capellan entered § 87(2)(b)

§ 87(2)(b)

It is undisputed that PO Rivera threatened to damage § 87(2)(b)'s property and that Police Officers Daniel Rivera, Hans Arias, Ron Castro, and Yordani Capellan subsequently entered § 87(2)(b)'s apartment.

According to the events information and 911 recording from the incident (**Board Review 6**), a female individual called 911 at 7:54am the morning of the incident. The caller reported that she heard her next-door neighbors, a male and female, fighting at § 87(2)(b) on the second floor of the building. The caller states that her “wall is shaking” and that a female individual is crying and stating, “get off of me.” The caller states that the female individual is yelling “get off of me” as she is on the phone with the 911 operator.

According to PO Rivera’s CCRB Testimony (**Board Review 9**), he was the first officer to arrive approximately two or three minutes later. Prior to arriving at the location, PO Rivera learned that there was an assault in progress, and a female individual was screaming for help. PO Rivera and PO Castro arrived at § 87(2)(b) together and went up to the second floor. PO Rivera heard yelling coming from the apartment. PO Rivera knocked on the door to § 87(2)(b) and received no answer. PO Rivera then called the 911 caller back. The 911 caller relayed the information to PO Rivera that she had provided to the 911 operator. PO Rivera stated that the 911 caller said that she “feared for the safety of the woman inside the apartment next door.”

PO Rivera stated in his CCRB interview (**Board Review 9**) that after speaking to the 911 caller he continued to knock on the door to § 87(2)(b) and received no answer. PO Rivera stated that he was prepared to “forcefully enter the apartment” due to receiving the report of the assault in progress, the verification from the 911 caller of the crime in progress and yelling sounds he was hearing from the apartment.

PO Capellan’s BWC footage (**Board Review 5**) shows that at media player timestamp 1:44, PO Rivera states, “You’ve got two seconds and I’m going to kick your door down.” At 1:52, PO Rivera repeats this phrase. At timestamp 01:19 of PO Rivera’s BWC (**Board Review 3**), PO Rivera kicks § 87(2)(b)'s door twice. PO Rivera stated in his CCRB interview (**Board Review 9**) that he informed the occupant of the apartment that officers needed to gain entry and that he would kick the door. § 87(2)(b) then opened the door immediately after PO Rivera kicked his door a second time.

It remains in dispute how much time elapsed between when officers first started to knock on § 87(2)(b)'s door and when § 87(2)(b) opened the door. According to PO Rivera’s BWC (**Board Review 5**), he immediately steps inside the threshold of the apartment, uses his right hand to push the open door, and enters § 87(2)(b)'s apartment, and states, “Where’s your girlfriend at?” Police officers Castro, Capellan, and Arias stand behind PO Rivera outside the apartment door.

PO Rivera stated in his CCRB interview (**Board Review 9**) that when § 87(2)(b) opened the door, he saw § 87(2)(b) and a female individual standing behind him. The apartment felt warm, and PO Rivera could feel heat emanating from the apartment. The female individual wore a hoodie, while the male individual, § 87(2)(b) wore shorts and no shirt. PO Rivera stated that from his experience, he thought that the female individual may have been trying to conceal scars or injuries with her sweatshirt. PO Rivera stated that he entered the apartment for the same reasons he was willing to break down the door: the information provided by the 911 caller regarding an assault in progress and yelling sounds that he heard coming from § 87(2)(b)'s apartment. At that point, at

Allegation (H) Abuse of Authority: Police Officer Daniel Rivera threatened

§ 87(2)(b) **with the use of force.**

Allegation (I) Force: Police Officer Daniel Rivera used physical force against § 87(2)(b) **.**

It is undisputed that PO Rivera threatened § 87(2)(b) with the use of force and subsequently used force against him. At timestamp 1:39 of PO Rivera's Body Worn Camera footage (**Board Review 3**), § 87(2)(b) raises his hand towards PO Rivera's face. It is unclear if § 87(2)(b) touches PO Rivera. PO Rivera and PO Castro ask to speak with the female individual. At timestamp 1:59, § 87(2)(b) pushes the female individual back into the apartment using both his hands. § 87(2)(b) and the female individual then walk back towards the doorway, in the direction of officers. § 87(2)(b) raises his voice, and states that officers are "banging on his door for no reason." § 87(2)(b) pounds his right wrist into his left open hand several times. At timestamp 2:19, a clicking sound can be heard, and § 87(2)(b) looks down towards PO Rivera's left hand. PO Rivera states, "Don't make me mace you bro."

It is undisputed that PO Rivera removed his OC Spray from his utility belt. PO Rivera stated in his CCRB interview (**Board Review 9**) that he may have taken out his OC Spray and held it in his hand. PO Rivera stated that he said, "don't make me mace you, bro" because § 87(2)(b) had put his hands in PO Rivera's face, and PO Rivera thought § 87(2)(b) may make physical contact with him. PO Castro's Body Worn Camera (**Board Review 4**) shows that at timestamp 3:07, PO Rivera gesticulates with his left hand and asks § 87(2)(b) to let the female individual outside. PO Rivera holds his OC Spray in his left hand.

PO Rivera stated in his CCRB interview (**Board Review 9**) that at that point, § 87(2)(b) pushed the female individual back into the apartment again. PO Rivera believed this push to be a form of harassment. In response to the push, PO Rivera stated he entered the apartment and "guided" § 87(2)(b) away from the door and placed himself in between § 87(2)(b) and the female individual. PO Castro's Body Worn Camera Footage (**Board Review 4**) shows that at timestamp 3:21, PO Rivera enters the apartment again and uses his right forearm to push § 87(2)(b) against the wall. PO Rivera then uses two hands and pushes § 87(2)(b) on his back. § 87(2)(b) moves approximately one foot as a result of this push. § 87(2)(b) was not injured and did not seek medical treatment as a result of this contact.

NYPD Patrol Guide Procedure 221-01 (**Board Review 21**) outlines the use of force guidelines for officers. When determining whether they should use force, officers should consider eleven different factors, including the immediacy of the perceived threat of the subject, the nature of the circumstances, and the actions taken by the subject.

NYPD Patrol Guide Procedure 221-07 (**Board Review 20**) illustrates how officers should use OC Spray and for what purposes. PG Procedure 221-07 reads that OC Spray may be used to gain or maintain control of individuals who are exhibiting active aggression, or to prevent individuals from injuring others.

In this instance, PO Rivera issued a warning to § 87(2)(b) about OC Spray in response to his knowledge of the emergency reported by the 911 caller, and § 87(2)(b)'s action of pushing the

female individual inside the apartment. PO Rivera stated in his CCRB interview (**Board Review 9**) that he physically “guided” § 87(2)(b) in order to place himself in between § 87(2)(b) and the female individual. PO Rivera’s Body Worn Camera (**Board Review 3**) shows that after he did so, no additional physical force was used.

§ 87(2)(b), § 87(2)(g)

Allegation (J) Discourtesy: Police Officer Daniel Rivera spoke discourteously to an individual.

It is undisputed that PO Rivera stated to the female individual, “what the fuck’s going on?” The female individual could not be identified or reached for a statement regarding this incident. PO Arias’ Body Worn Camera (**Board Review 2**) shows that officers are eventually able to speak to the female individual in the hallway. The female individual leaves the apartment and closes the door behind her at media player timestamp 6:26. § 87(2)(b) remains inside the apartment. The female individual then turns to speak with officers. At media player timestamp 6:30, PO Rivera states, “What the fuck’s going on?” The female individual responds, “nothing.”

During his CCRB interview (**Board Review 9**), PO Rivera stated that he may have stated “What the fuck’s going on?” due to the frustration and time it took to get the female individual to speak with officers. PO Rivera stated that he was still concerned with the individual’s safety during the conversation outside of the apartment. PO Rivera stated that the conversation with the female individual lasted approximately one minute, after which she went back into the apartment with § 87(2)(b) and officers exited the building.

Administrative Guide Regulation 304-06 (**Board Review 13**) prohibits the use of “discourteous or disrespectful remarks” and reads that members of service shall in treat members of the public with “titles of respect.” DCT Case Number 2013-10143 (**Board Review 19**) notes that profanity is prohibited, except for in cases when officers feel unsafe, and that the situation they are in is dangerous for themselves and others.

Although it is undisputed that portions of this incident were stressful, it is clear from the Body Worn Camera footage that the conversation between officers and the female individual, who is the alleged victim of the reported assault, takes place away from § 87(2)(b) the alleged perpetrator. § 87(2)(b) plays no role in the conversation between officers and the female individual and remains inside the apartment. PO Rivera stated during his CCRB interview (**Board Review 9**) that § 87(2)(b) was “not complying” and preventing the officers from achieving their goal of speaking to the alleged victim. At the point where PO Rivera spoke with the female individual, the situation was no longer at the level of stress and danger it once was, as § 87(2)(b) was not a part of the interaction.

§ 87(2)(b), § 87(2)(g)

Allegation (K) Abuse of Authority: Police Officer Hans Arias made a sexually suggestive remark to § 87(2)(b)

It is undisputed that Police Officer Hans Arias made a sexually explicit remark to § 87(2)(b) PO Arias' Body Worn Camera (**Board Review 2**) shows that at media payer timestamp 08:51, § 87(2)(b) states, "all ya'll are gonna eat my big black dick." PO Arias responds, "Okay. So, whip it out, whip it out. Let me see. So? So? We do it together. You're the one that's saying it. So? It's 2020." In his CCRB interview (**Board Review 10**), PO Arias stated that as officers left § 87(2)(b) § 87(2)(b) stated, "Suck my big black dick you homo, you faggot." PO Arias stated that he "thought that § 87(2)(b) was joking and was saying it as a joke." PO Arias stated that he responded, "Whip it out" and subsequently left the location. PO Arias stated in his CCRB interview that he said those words because he was "joking back with § 87(2)(b)

NYPD Administrative Guide Regulation 304-06 (**Board Review 13**) stipulates that members of service are prohibited from "engaging in conduct prejudicial to good order, efficiency, or discipline of the Department." Administrative Guide Regulation 304-06 also prohibits the use of "discourteous or disrespectful remarks;" members of service shall in treat members of the public with "titles of respect." NYPD Patrol Guide Procedure 200-01 (**Board Review 15**) reads that the New York City Police Department pledges to "render [their] services with courtesy and civility."

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- Police Officer Daniel Rivera has been a member of service for three years and has been a subject in one other CCRB complaint and two allegations of which all were substantiated:
 - 202003903 involved substantiated allegations of Abuse of Authority—Obstructed Shield Number and Abuse of Authority—Other against Police Officer Daniel Rivera. The Board Recommended Command Discipline A and Command Discipline B.
- Police Officer Hans Arias has been a member of service for 5 years and has been a subject in two previous CCRB complaints and six allegations, none of which were substantiated.

§ 87(2)(g)

- Police Officer Yordani Capellan has been a member of service for 5 and has been a subject in four previous CCRB complaints and 10 allegations, none of which were substantiated.

§ 87(2)(g)

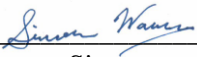
- Police Officer Ron Castro has been a member-of-service for 5 years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of October 27, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 14**).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City.

Squad: 15

Investigator:	<u>Adriaan Denbroeder</u>	<u>Inv. Denbroeder</u>	<u>December 8, 2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u></u>	<u>IM Simon Wang</u>	<u>12/09/21</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
-----------	---------	---------	---------